

Introduced by Senator Dunn

February 20, 2003

An act to amend Sections 832.5, 832.7 and 832.8 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as introduced, Dunn. Peace officers: personnel records.

Existing law requires departments or agencies employing peace officers or custodial officers to establish procedures to investigate complaints by the public against these officers. Existing law specifies what complaints, reports, and other materials pertinent thereto may be maintained in an officer's general personnel file.

This bill would revise the definition of "general personnel file" for these purposes to include, among other things, administrative investigations, including any compelled statement by the employee, as specified, and performance evaluations.

Existing law provides that personnel records and information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery, as specified.

This bill would make a technical clarifying amendment to these provisions.

Existing law specifies what materials constitute a peace officer's or custodial officer's personnel records, as defined.

This bill would revise that definition to include, among other things, administrative investigations, including any compelled statement by the employee, as specified, and performance evaluations.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 832.5 of the Penal Code is amended to
2 read:

3 832.5. (a) (1) Each department or agency in this state that
4 employs peace officers shall establish a procedure to investigate
5 complaints by members of the public against the personnel of these
6 departments or agencies, and shall make a written description of
7 the procedure available to the public.

8 (2) Each department or agency that employs custodial officers,
9 as defined in Section 831.5, may establish a procedure to
10 investigate complaints by members of the public against those
11 custodial officers employed by these departments or agencies,
12 provided however, that any procedure so established shall comply
13 with the provisions of this section and with the provisions of
14 Section 832.7.

15 (b) Complaints and any reports or findings relating to these
16 complaints shall be retained for a period of at least five years. All
17 complaints retained pursuant to this subdivision may be
18 maintained either in the peace or custodial officer's general
19 personnel file or in a separate file designated by the department or
20 agency as provided by department or agency policy, in accordance
21 with all applicable requirements of law. However, prior to any
22 official determination regarding promotion, transfer, or
23 disciplinary action by an officer's employing department or
24 agency, the complaints described by subdivision (c) shall be



1 removed from the officer's general personnel file and placed in
2 separate file designated by the department or agency, in
3 accordance with all applicable requirements of law.

4 (c) Complaints by members of the public that are determined
5 by the peace or custodial officer's employing agency to be
6 frivolous, as defined in Section 128.5 of the Code of Civil
7 Procedure, or unfounded or exonerated, or any portion of a
8 complaint that is determined to be frivolous, unfounded, or
9 exonerated, shall not be maintained in that officer's general
10 personnel file. However, these complaints shall be retained in
11 other, separate files that shall be deemed personnel records for
12 purposes of the California Public Records Act (Chapter 3.5
13 (commencing with Section 6250) of Division 7 of Title 1 of the
14 Government Code) and Section 1043 of the Evidence Code.

15 (1) Management of the peace or custodial officer's employing
16 agency shall have access to the files described in this subdivision.

17 (2) Management of the peace or custodial officer's employing
18 agency shall not use the complaints contained in these separate
19 files for punitive or promotional purposes except as permitted by
20 subdivision (f) of Section 3304 of the Government Code.

21 (3) Management of the peace or custodial officer's employing
22 agency may identify any officer who is subject to the complaints
23 maintained in these files which require counseling or additional
24 training. However, if a complaint is removed from the officer's
25 personnel file, any reference in the personnel file to the complaint
26 or to a separate file shall be deleted.

27 (d) As used in this section, the following definitions apply:

28 (1) "General personnel file" means the file maintained by the
29 agency containing the primary records specific to each peace or
30 custodial officer's employment, including evaluations,
31 assignments, status changes, ~~and~~ imposed discipline, *and other*
32 *personnel records, as that term is defined in Section 832.8.*

33 (2) "Unfounded" means that the investigation clearly
34 established that the allegation is not true.

35 (3) "Exonerated" means that the investigation clearly
36 established that the actions of the peace or custodial officer that
37 formed the basis for the complaint are not violations of law or
38 department policy.

39 SEC. 2. Section 832.7 of the Penal Code is amended to read:

1 832.7. (a) Peace officer or custodial officer personnel
2 records~~and~~, records maintained by any state or local agency
3 pursuant to Section 832.5,~~or~~ *and* information obtained from these
4 records, are confidential and shall not be disclosed in any criminal
5 or civil proceeding except by discovery pursuant to Sections 1043
6 and 1046 of the Evidence Code. This section shall not apply to
7 investigations or proceedings concerning the conduct of police
8 officers or a police agency conducted by a grand jury, a district
9 attorney's office, or the Attorney General's office.

10 (b) Notwithstanding subdivision (a), a department or agency
11 shall release to the complaining party a copy of his or her own
12 statements at the time the complaint is filed.

13 (c) Notwithstanding subdivision (a), a department or agency
14 which employs peace or custodial officers may disseminate data
15 regarding the number, type, or disposition of complaints
16 (sustained, not sustained, exonerated, or unfounded) made against
17 its officers if that information is in a form which does not identify
18 the individuals involved.

19 (d) Notwithstanding subdivision (a), a department or agency
20 which employs peace or custodial officers may release factual
21 information concerning a disciplinary investigation if the officer
22 who is the subject of the disciplinary investigation, or the officer's
23 agent or representative, publicly makes a statement he or she
24 knows to be false concerning the investigation or the imposition
25 of disciplinary action. Information may not be disclosed by the
26 peace or custodial officer's employer unless the false statement
27 was published by an established medium of communication, such
28 as television, radio, or a newspaper. Disclosure of factual
29 information by the employing agency pursuant to this subdivision
30 is limited to facts contained in the officer's personnel file
31 concerning the disciplinary investigation or imposition of
32 disciplinary action that specifically refute the false statements
33 made public by the peace or custodial officer or his or her agent or
34 representative.

35 (e) The department or agency shall provide written notification
36 to the complaining party of the disposition of the complaint within
37 30 days of the disposition.

38 The notification described in this subdivision shall not be
39 conclusive or binding or admissible as evidence in any separate or



1 subsequent action or proceeding brought before an arbitrator,
2 court, or judge of this state or the United States.

3 (f) Nothing in this section shall affect the discovery or
4 disclosure of information contained in a peace or custodial
5 officer's personnel file pursuant to Section 1043 of the Evidence
6 Code.

7 SEC. 3. Section 832.8 of the Penal Code is amended to read:

8 832.8. As used in Section 832.7, "personnel records" means
9 any file maintained under that individual's name by his or her
10 employing agency and containing records relating to any of the
11 following:

12 (a) Personal data, including marital status, family members,
13 educational and employment history, home addresses, or similar
14 information.

15 (b) Medical history.

16 (c) Election of employee benefits.

17 (d) Employee advancement, appraisal, *performance*
18 *evaluations*, or discipline.

19 (e) Complaints, or investigations of complaints, *whether*
20 *initiated by members of the public or by any other person*,
21 concerning an event or transaction in which he or she participated,
22 or which he or she perceived, and pertaining to the manner in
23 which he or she performed his or her duties.

24 (f) *Administrative investigations, including any compelled*
25 *statement by the employee, conducted in accordance with Chapter*
26 *9.7 (commencing with Section 3300) of Division 4 of Title 1 of the*
27 *Government Code*.

28 (g) Any other information the disclosure of which would
29 constitute an unwarranted invasion of personal privacy.

30 SEC. 4. Notwithstanding Section 17610 of the Government
31 Code, if the Commission on State Mandates determines that this
32 act contains costs mandated by the state, reimbursement to local
33 agencies and school districts for those costs shall be made pursuant
34 to Part 7 (commencing with Section 17500) of Division 4 of Title
35 2 of the Government Code. If the statewide cost of the claim for
36 reimbursement does not exceed one million dollars (\$1,000,000),
37 reimbursement shall be made from the State Mandates Claims
38 Fund.

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